

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

**ORDER**

- against -

13-CR-149(KAM)

PAUL RIVERA,  
MICHAEL GARRETT,  
Defendants.

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**MATSUMOTO, United States District Judge:**

On April 27, 2015, the government filed an *ex parte* letter under seal disclosing the Presentence Investigation Reports ("PSRs") for cooperating witnesses Vincent Fearon ("Mr. Fearon") and Jonathan Fontanes ("Mr. Fontanes"). (ECF No. 308.) The defendants have not requested disclosure of the PSRs of Mr. Fearon and Mr. Fontanes. Pursuant to the procedure set forth by the Second Circuit in *United States v. Charmer Industries, Inc.*, 711 F.2d 1164 (2d Cir. 1983), the court has conducted an *in camera* review of the PSRs for impeachment and exculpatory material.

The Second Circuit has explained the procedure for disclosure of witness PSRs as follows:

*Charmer* requires that when a co-defendant requests the presentence report of an accomplice witness, the district court should examine the report *in camera* to determine if there are any statements made by the witness that contain exculpatory or impeachment material. If there is any such material, the judge should not release it unless there is 'a compelling need for disclosure to meet the ends of justice.' Indeed, in *Charmer*, we reversed a district court's

decision approving release of the presentence report because the information in it was available elsewhere.

*United States v. Moore*, 949 F.2d 68, 72 (2d Cir. 1991) (quoting *Charmer*, 711 F.2d at 1174). The Second Circuit has also held that PSRs do not constitute "'material required to be produced by the government' under 18 U.S.C. § 3500." *Moore*, 949 F.2d at 70-71 (quoting *United States v. Canniff*, 521 F.2d 565 (2d Cir. 1975) *cert. denied*, 423 U.S. 1059 (1976)).

Based on the court's *in camera* review of Mr. Fearon's and Mr. Fontanes' PSRs and the government's letter dated April 24, 2015 disclosing *Giglio* material (ECF No. 302), the court does not find that the PSRs contain any impeachment or exculpatory material pursuant to *Brady* or *Giglio* that the government has not already disclosed to the defendants in discovery or pursuant to 18 U.S.C. § 3500. Consequently, the court does not find "a compelling need for disclosure" of the PSRs and declines to do so.

**SO ORDERED.**

Dated: May 8, 2015  
Brooklyn, New York

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**KIYO A. MATSUMOTO**  
United States District Judge  
Eastern District of New York